

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Space)	IB Docket No. 02-34
Station Licensing Rules and Policies)	

SECOND ORDER ON RECONSIDERATION

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By the Commission:

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I. INTRODUCTION

1. In 2003, the Commission adopted the *First Space Station Licensing Reform Order*.¹ In

¹ *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 18 FCC Rcd 10760 (2003) (*First Space Station Licensing Reform Order*).

that Order, the Commission substantially reformed its space station licensing procedures to significantly reduce the amount of time needed to process an application.² In addition, the Commission adopted several safeguards to discourage speculative satellite applications. In response, a number of petitions for reconsideration were filed.³ The Commission addressed those petitions focused on the satellite bond requirements in the *First Order on Reconsideration and Fifth Report and Order*.⁴ In this Order, we address the remaining petitions for reconsideration of the *First Space Station Licensing Reform Order*, which we grant in part, deny in part, and dismiss as moot in part.⁵ Specifically, we: (1) revise the Commission's rules to eliminate the "three-licensee presumption that applies to the NGSO-like⁶ processing round procedure, and also review the procedures that we will apply when we redistribute spectrum among remaining NGSO-like licensees when a license is cancelled for any reason; (2) reiterate the Commission's rationale for eliminating the anti-trafficking rule for satellites and the implications of eliminating that rule; (3) clarify and affirm additional safeguards to deter speculative filings that were adopted in the *First Space Station Licensing Reform Order*; and (4) clarify other provisions of the *First Space Station Licensing Reform Order*, including transfers of ownership of non-U.S.-licensed satellites, the interrelationship between International Telecommunication Union (ITU) coordination date-filing priority and the U.S. domestic licensing framework, and Commission processing of modification requests. Our actions on these petitions for reconsideration further the goals of the *First Space Station Licensing Reform Order* to develop a faster satellite licensing procedure while safeguarding against speculative applications, thereby expediting service to the public.

2. Finally, we note that other issues brought forth in these petitions have been rendered moot by the *Comprehensive Review of Licensing and Operating Rules for Satellite Services*.⁷

II. BACKGROUND

3. In the *First Space Station Licensing Reform Order*, the Commission substantially reformed its space station licensing procedures. Specifically, the Commission adopted different frameworks for processing each of the two different types of satellite systems. For NGSO-like applications, the Commission adopted a processing round procedure. When an NGSO-like application is filed, the Commission announces a cut-off date for competing applications, and then splits the available

² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10765-66, para. 4.

³ See Appendix A.

⁴ Specifically, the Commission denied in part, and granted in part, the petitions for reconsideration filed by Northrop Grumman Space Technology and Mission Systems Corporation and Telesat Canada, and a Joint Petition filed by Boeing Company, Hughes Network Systems, Inc., Iridium Satellite LLC, Lockheed Martin Corporation, Loral Space & Communications, Ltd., Mobile Satellite Ventures, LP, PanAmSat Corporation, and SES Americom (SES). See *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Order on Reconsideration and Fifth Report and Order, 19 FCC Rcd 12637 (2004).

⁵ The remaining petitions for reconsideration include those filed by Hughes Network Systems (Hughes), ICO Global Communications (Holdings), Limited (ICO), Satellite Industry Association (SIA), and SES.

⁶ "NGSO-like" applications are applications for licenses for all non-geostationary satellite orbit (NGSO) satellite systems, and for geostationary satellite orbit (GSO) satellites intended to provide mobile-satellite service (MSS) to earth stations with omni-directional antennas. *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10773, para. 21. See also 47 CFR § 25.157(a).

⁷ See *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Review Second R&O*). The issues that are now moot, and thus are not addressed in this Order, relate to: (1) interim space station satellite milestones (now eliminated) and (2) limits in Section 25.159(a) on the permissible number of pending applications and licensed but unlaunched satellites for each satellite provider (also eliminated). See SIA petition at 2-3 and SES petition at 25-33. See also *Part 25 Review Second R&O* at 14737-14740, paras. 57-64; and 14817-14818, paras. 335-38, respectively.

spectrum among all the qualified applicants.⁸ For GSO-like applications,⁹ the Commission adopted a first-come, first-served procedure. Under this procedure, the Commission considers applications in the order that they are filed, and grants each application if the applicant is qualified and the application does not conflict with any previously licensed satellite or previously filed application.¹⁰

4. The Commission also adopted several other policy provisions in the *First Space Station Licensing Reform Order*, one of which was to eliminate the “anti-trafficking rule” for satellites. The anti-trafficking rule prohibited licensees from selling “bare” satellite licenses for profit.¹¹ Eliminating the anti-trafficking rule allows applicants in processing rounds to obtain more spectrum if dividing the spectrum evenly does not provide enough spectrum to meet their business plans.¹² It also allows market forces, rather than the administrative process, to play a greater role in spectrum assignments.¹³

5. The Commission recognized, however, that eliminating the anti-trafficking rule and adopting a first-come, first-served procedure increased the risk of speculation. Consequently, the Commission adopted new safeguards to deter speculative filings. For example, the Commission adopted limits on the number of pending applications and licensed but unlaunched satellites an applicant can have in any frequency band.¹⁴ The Commission also prohibited applicants from selling their place in the satellite application processing queue (or queue).¹⁵ In addition, the Commission clarified that it will continue to require applications to be substantially complete when filed or face dismissal.¹⁶

6. On September 26, 2003, the parties listed in Appendix A filed petitions for reconsideration and or clarification of one or more provisions in the *First Space Station Licensing Reform Order*, including safeguards against speculation and the elimination of the anti-trafficking rule. The petitioners also ask us to reconsider or clarify a number of other procedures adopted in the *First Space Station Licensing Reform Order*. Four parties filed oppositions to the petitions, and three filed replies. Those pleadings are also listed in Appendix A. We address these petitions and issues below, to the extent we have not already acted on them in the *First Order on Reconsideration* and insofar as they are not rendered moot by the *Part 25 Review Second R&O*.

⁸ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10777, para. 32. The Commission developed this procedure in *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, 15 FCC Rcd 16127 (2000).

⁹ GSO-like satellite systems use earth stations with antennas with directivity towards the satellites, such as Fixed Satellite Service (FSS) earth stations, and MSS feeder links that use GSO satellites. See *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10773, para. 21; 47 CFR § 25.158(a).

¹⁰ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10805, paras. 108-10.

¹¹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10839, para. 209, citing *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Third Report and Order, 12 FCC Rcd 22310, 22339-40, para. 74 (1997). A “bare” license is a license to operate a communications facility when no facility has been constructed. *Amendment of the Commission’s Space Station Licensing Rules and Policies*, Notice of Proposed Rulemaking, 17 FCC Rcd 3847, 3883 n.144 (2002) (*Space Station Licensing Reform NPRM*).

¹² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10781, para. 45.

¹³ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10842, para. 217.

¹⁴ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10835-36, paras. 199-200, 10847-48, paras. 230-33.

¹⁵ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10851-52, paras. 241-43.

¹⁶ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10852, para. 244.

III. DISCUSSION

A. NGSO-like Processing Round Procedures

1. Three-Licensee Presumption

7. *Background.* As part of the processing round procedure adopted for NGSO-like systems in the *First Space Station Licensing Reform Order*, the Commission designed this framework to meet two often competing policy goals: (1) accelerating the reassignment of spectrum to other satellite licensees, in order to expedite the provision of satellite services to customers; and (2) creating opportunities for competitive entry to the extent possible.¹⁷ Further, the Commission adopted a rebuttable presumption that the “sufficient number of licensees in the frequency band” is three.¹⁸ Accordingly, Section 25.157(e) of the current rules requires the Commission to withhold spectrum for use in a subsequent processing round if fewer than three qualified applicants file applications in the initial processing round.¹⁹

8. The Commission also created a standard for rebutting the three-licensee presumption: the proponent must demonstrate that allowing only two licensees in the frequency band will result in “extraordinarily large, cognizable, and non-speculative efficiencies.”²⁰ The Commission adopted this standard because it is used by courts in reviewing proposed mergers that would result in duopoly, particularly when further market entry would be difficult. Specifically, the Commission found that the factors that have led courts to disfavor mergers to duopoly also support establishing a procedure that will maintain at least three competitors in a frequency band, unless an interested party can rebut our presumption that three is necessary to maintain a competitive market.²¹ The Commission explained further that, in cases where the merger is likely to result in a significant reduction in the number of competitors and a substantial increase in concentration, antitrust authorities generally require the parties to demonstrate that there exist countervailing, extraordinarily large, cognizable, and non-speculative efficiencies that are likely to result from the merger.²²

9. ICO requests us to reconsider the presumption that the “sufficient number of licensees in the frequency band” is three.²³ ICO maintains that the purpose of the three-licensee presumption is to promote competition,²⁴ but that such a presumption assumes that three licensees in a frequency band are necessary for a competitive market, and so implicitly defines a frequency band as a market.²⁵ ICO contends that such a market definition is an unreasonable departure from Commission precedent.²⁶ ICO

¹⁷ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10788, para. 62.

¹⁸ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10788-89, para. 64. *See also* 47 CFR § 25.157(e)(2) and 47 CFR § 25.157(g).

¹⁹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10788, para. 63. *See also* Section 25.157(e) of the Commission’s Rules, 47 CFR § 25.157(e).

²⁰ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10789, para. 64.

²¹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10789, para. 64.

²² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10788-89, para. 64, quoting from *EchoStar-DirecTV Hearing Designation Order*, 17 FCC Rcd at 20604-05, para. 102.

²³ We note that ICO was renamed Pendrell Corporation in June 2011. *ICO Global Communications changing name to Pendrell*, Puget Sound Business News, July 21, 2011, <http://www.bizjournals.com/seattle/news/2011/07/21/ico-global-communications-changing.html> (last visited on February 19, 2016). In May 2009, the Commission authorization for ICO’s G1 satellite was assigned to an ICO subsidiary, DBSD North America, Inc. which was acquired by Dish Network in March 2012. *See* http://space.skyrocket.de/doc_sdat/ico-g.htm (last visited on February 19, 2016).

²⁴ ICO Petition at 5-6.

²⁵ ICO Petition at 6.

²⁶ ICO Petition at 6-7.

also notes that part of the policy underlying the processing round approach was to issue licenses to NGSO-like applicants quickly, and then allow them to negotiate among themselves to the extent that their spectrum assignments do not match their business plans. ICO asserts that the three-licensee presumption undercuts that policy to the extent that it limits licensees to one-third of the spectrum in a frequency band.²⁷ In addition, SIA recently submitted an *ex parte* filing urging the Commission to consider whether this rule continues to be necessary and appropriate to further the Commission's goals.²⁸

10. *Discussion.* Upon reconsideration, we grant ICO's request and revise the Commission's rules to eliminate the "three-licensee presumption" adopted in the *First Space Station Licensing Reform Order*.²⁹ We find that the "three-licensee presumption" is overly restrictive for its intended purpose. We are persuaded by ICO's arguments that a specific frequency band does not necessarily equate to a market, and thus having fewer than three licensees in a band does not necessarily indicate a harmful lack of competition in some market that we should attempt to remedy. Indeed, we find it common that licensees in different bands compete with each other in the provision of satellite-based services in broader markets. For example, in the *2 GHz MSS Returned Spectrum Order*, the Commission found that 2 GHz MSS satellite operators will compete with MSS operators in other frequency bands.³⁰ In this case, we note that there are numerous NGSO-like system operators that currently compete across frequency bands. For example, Orbcomm provides data services using frequency bands below 1GHz, Iridium and GlobalStar provide data services in the L- and S-band frequencies between 1 GHz and 3 GHz, and O3b provides data services using Ka-band frequencies. Thus, rather than fostering competition, the "three-licensee presumption" could result in our delaying the deployment of spectrum that could be effectively put to use in the marketplace. We therefore revise Section 25.157 to remove the "three-licensee presumption" that three satellite licensees in a frequency band are sufficient (or required) to make reasonably efficient use of the spectrum when licensing NGSO-like systems, whether in an initial processing round or upon redistribution of spectrum.³¹ This revision is also consistent with a key goal of the *First Space Station Licensing Reform Order*, specifically to "expedite satellite licensing and provision of service to the public."³²

11. Finally, we note that in cases where one or more applicants in a processing round request less spectrum than they would be assigned if all the available spectrum were divided equally among all the qualified applicants, some spectrum would remain unassigned. In those cases, we retain the procedure that the Commission adopted in the *First Space Station Licensing Reform Order*, to redistribute the remaining spectrum among the other qualified applicants who have previously applied for the spectrum. If spectrum still remains, then interested parties would be free to apply for that unassigned spectrum.³³

²⁷ ICO Petition at 7-9.

²⁸ See Letter from Tom Stroup, President, SIA, to Marlene H. Dortch, Secretary, FCC (filed April 1, 2016) (SIA *Ex Parte*).

²⁹ See Section 25.157(e)(2) of the Commission's rules, 47 CFR § 25.157(e)(2) (revised), and Section 25.157(g) of the Commission's rules, 47 CFR § 25.157(g) (revised), as set forth in Appendix B to this Order.

³⁰ *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, Order, 20 FCC Rcd 19696, 19711, para. 33 (2005) (*2 GHz MSS Returned Spectrum Order*).

³¹ See Section 25.157(e) of the Commission's rules, 47 CFR § 25.157(e), revised as set forth in Appendix B to this Order. Specifically, we remove paragraphs (e)(3) and (g)(3) and revise paragraph (e)(2). Because we grant ICO's request, we need not address any other argument that ICO raises in opposition to the three-licensee presumption. ICO Petition at 2-3, 4-5.

³² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10766-67, para. 7.

³³ See Section 25.157(e)(2) of the Commission's rules, 47 CFR § 25.157(e)(2), revised as set forth in Appendix B to this Order.

Any such application, if it is substantially complete, would trigger another processing round.³⁴

2. Procedures for Redistribution of Spectrum

12. *Background.* In the *First Space Station Licensing Reform Order*, the Commission also adopted rules to facilitate prompt reassignment of any spectrum that was awarded in an NGSO-like processing round and later becomes available for reassignment. Specifically, the Commission stated that, if an NGSO-like system licensee surrenders a license awarded in a processing round, the Commission will reassign the spectrum assigned to that licensee equally among the remaining licensees that participated in the original processing round, unless (1) the number of licensees remaining in the frequency band is not sufficient to make reasonably efficient use of the frequency band, or (2) there is some basis at that time for considering reallocation of the spectrum.³⁵ By “reasonably efficient use of the frequency band,” the Commission meant that the remaining satellite licensees have not been assigned more spectrum than they need to meet their current and reasonably anticipated future customer needs.³⁶

13. *Discussion.* Given that we have eliminated the three licensee presumption as a parameter in our licensing of NGSO-like systems, we take the opportunity to clarify the procedures that apply when we redistribute spectrum among the remaining NGSO-like systems after an authorization for a NGSO-like system has been canceled or otherwise becomes available. We emphasize that this redistribution procedure applies only in cases where spectrum was granted pursuant to a processing round, and one or more of those grants of spectrum is lost or surrendered for any reason.³⁷ In this case, the Commission will issue a public notice or order announcing the loss or surrender of such spectrum. Then, the Commission will propose to modify the remaining grants, pursuant to or consistent with Section 316 of the Communications Act,³⁸ to redistribute the returned spectrum among the remaining system operators that have requested use of the spectrum.³⁹ The returned spectrum will generally be redistributed equally among the remaining operators that requested the spectrum, although no operator will receive more spectrum on redistribution than it requested in its application. Additionally, if an operator has not requested use of a particular spectrum band, it will not receive spectrum in that band. If the Commission is unable to make a finding that there will be reasonably efficient use of the spectrum, we will consider on a case-by-case basis whether to open a new processing round for the returned spectrum, leave it unassigned at that point, or repurpose it for another use.

B. Safeguards Against Speculation

1. Elimination of the Anti-Trafficking Rule for Satellite Licenses

14. *Background.* Prior to the *First Space Station Licensing Reform Order*, the Commission prohibited satellite licensees from selling “bare” satellite licenses for profit.⁴⁰ This “anti-trafficking rule” was intended to discourage speculators and prevent unjust enrichment of those who do not implement

³⁴ 47 CFR § 25.157(e)(2), revised as set forth in Appendix B of this Order.

³⁵ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10788, paras. 61-62.

³⁶ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10788, para. 61.

³⁷ Section 25.157(g) of the Commission’s rules, 47 CFR § 25.157(g), revised as set forth in Appendix B to this Order.

³⁸ 47 U.S.C. § 316 (which details, in relevant part, the processes for Commission modification of construction permits or licenses).

³⁹ This redistribution process would not be applied, however, if the Commission determines that a redistribution of the spectrum among the remaining operators would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band, *See* 47 CFR § 25.157(g)(1).

⁴⁰ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10838, para. 209, *citing Space Station Licensing Reform NPRM*, 17 FCC Rcd at 3883-84, paras. 109-10.

their proposed systems.⁴¹ Nevertheless, in the satellite context, these same rules also could have the effect of preventing a satellite license from being transferred to an entity that would put it to its highest valued use in the shortest amount of time.⁴²

15. The Commission determined in the *First Space Station Licensing Reform Order* that the public interest benefits of eliminating the satellite anti-trafficking rule outweigh the benefits of keeping the rule.⁴³ The Commission also emphasized, however, that it would continue to determine whether it is in the public interest to grant any particular transfer of control application.⁴⁴ The Commission indicated it would also examine, if appropriate, whether the seller obtained the license in good faith or for the primary purpose of selling it for profit, whether the licensee made serious efforts to develop a satellite or constellation, and/or whether the licensee faces changed circumstances.⁴⁵ The Commission stated that allowing parties with no intention of building a satellite system to take advantage of the Commission's regulatory process would be contrary to the public interest.⁴⁶ The Commission further stated that, in making any such determination, it would consider only substantial evidence that a satellite license was obtained exclusively for purposes of selling for profit, and would not consider weakly supported allegations.⁴⁷

16. *Discussion.* In its Petition, SIA contends that, by reserving the right to determine whether a licensee made serious efforts to develop a satellite in the context of reviewing transfer of control applications, the Commission undercuts the public interest benefits it identified in eliminating the anti-trafficking rule.⁴⁸ SIA is also concerned that examining the motivation of sellers could encourage opponents of a transaction to file oppositions merely to delay the transaction.⁴⁹

17. We acknowledge SIA's concerns, but conclude that those concerns do not warrant reconsideration of those aspects of the *First Space Station Licensing Reform Order* that revised the Commission's above-described approach for dealing with transfer of control applications that may raise trafficking concerns. We continue to believe that allowing parties with no intention of building a satellite system to take advantage of the Commission's regulatory process would be contrary to the public interest. Maintaining this limited exception does not undermine our elimination of the anti-trafficking rule. Indeed, we require that parties opposing a transaction based on a seller's motivation to provide, at a minimum, *substantial* evidence that a satellite license was obtained for purposes of selling the license for profit.⁵⁰ Thus, we not only prevent opponents to a transaction from delaying the transaction on purely frivolous grounds, but, by requiring this type of substantial showing, we raise the bar higher to ensure that these transactions do not encounter any unwarranted delay. For these reasons, we will retain the policy articulated in the *First Space Station Licensing Reform Order* of taking into account a seller's motives in obtaining a license in those rare cases where it may be warranted.

⁴¹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10839, para. 209.

⁴² *Id.* at 10839, para. 209, citing *Space Station Licensing Reform NPRM*, 17 FCC Rcd at 3884, para. 111.

⁴³ *Id.* at 10841-44, paras. 215-20.

⁴⁴ *Id.* at 10844-45, para. 221. See also 47 CFR § 25.119(g).

⁴⁵ *Id.* at 10844-45, paras. 221-22.

⁴⁶ *Id.* at 10845, para. 222.

⁴⁷ *Id.* at 10845, para. 222 and n.528.

⁴⁸ SIA Petition at 3-4, citing *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10844-45, paras. 221-22.

⁴⁹ SIA Petition at 5.

⁵⁰ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10845 n.528 (emphasis added).

2. Prohibition on Sales of Place in Satellite Application Processing Queue

18. *Background.* In the *First Space Station Licensing Reform Order*, the Commission adopted a rule prohibiting sales of places in the queue as an additional safeguard against speculation.⁵¹ The Commission also revised its rules so that an applicant proposing to merge with another company could do so without losing its place in the processing queue.⁵² Specifically, so as not to discourage legitimate business transactions, the Commission adopted a rule treating transfers of control as minor amendments, rather than major amendments. Under the rules, the Commission treats major amendments to applications as newly filed applications, which moves the application to the end of the queue.⁵³ The Commission treats minor amendments outside the queue.

19. *Discussion.* SIA argues that it is inconsistent to prohibit an applicant from selling its place in the queue, while allowing an applicant that transfers control over itself to a new controlling party to retain its place in the queue.⁵⁴ The Commission's purpose in prohibiting sales of places in the satellite application processing queue was to discourage entities who had no intention of building a system from filing applications merely to make a profit from a sale to an unrelated entity.⁵⁵ It was not to discourage companies from merging with other companies in legitimate business transactions, especially when those transactions involve other assets and the new company is better positioned to compete in the marketplace.⁵⁶ Moreover, an applicant's transfer of control is less likely to be used as an ongoing abusive strategy than the sale of places in the queue. Thus, we find no inconsistency in these rules and will leave them unchanged.

3. Effect of License Surrender Prior to Milestone Deadlines on Application Limits

20. *Background.* Under Section 25.159(d) of the rules, adopted in the *First Space Station Licensing Reform Order* and commonly referred to as the "Three-Strikes" rule, if a licensee misses three milestones in any three-year period, it is prohibited from filing additional satellite applications if it possesses two satellite applications and/or unbuilt satellites in any frequency band.⁵⁷ This limit remains in force until the licensee demonstrates that it would be very likely to construct its licensed facilities if it

⁵¹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10851, para. 242.

⁵² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10814, para. 140.

⁵³ 47 CFR § 25.116; *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10814, para. 140.

⁵⁴ SIA Petition at 9-12.

⁵⁵ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10851-52, para. 243.

⁵⁶ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10814, para. 140. See, e.g., *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors, and Intelsat North America, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Order and Authorization, 19 FCC Rcd 2404, 2412-13 (para. 18) (Int'l Bur. 2004); *GE American Communications, Inc., CCC Merger Sub, Inc., and Columbia Communications Corp., Application for Consent to Transfer of Earth Station License of Columbia Communications Corporation*, Order and Authorization, 15 FCC Rcd 11590, 11592 (para. 5) (Int'l Bur., 2000); *Loral Space & Communication Ltd. and Orion Network Systems, Inc., Application for the Transfer of Control of Various Space Station, Earth Station, and Section 214 Authorizations*, 13 FCC Rcd 4592 (Int'l Bur. 1998).

⁵⁷ 47 CFR § 25.159(d); *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10836, para. 200. In that order, the Commission also adopted a generally applicable limit of five GSO-like pending applications and/or unlaunched satellites. *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10847, para. 230. In the *Part 25 Review Second R&O*, the Commission eliminated that limit, although it retained the two satellite application and/or unbuilt satellite limit applicable in the event that a licensee misses three or more milestones within a three year period. See *Part 25 Review Second R&O* at 14818, paras. 337-38.

were allowed to file more applications.⁵⁸ The Commission reasoned that a licensee that consistently obtains licenses but does not meet its milestones precludes others from going forward with their business plans while it holds those licenses.⁵⁹

21. *Discussion.* SES Americom (SES) maintains that the Commission should not consider a licensee's relinquishing a license prior to the contract execution milestone in determining whether to impose the limit on satellite applications and/or unbuilt satellites on that licensee.⁶⁰ As an initial matter, we note that the milestone rules have been revised in the *Part 25 Review Second R&O* to eliminate interim milestones.⁶¹ As a result, there is no longer a contract execution milestone, and thus SES's arguments are now moot in part. However, since we retained the final milestone requirement, any authorization surrendered prior to fulfilling the remaining milestone requirement will continue to be subject to the "Three-Strikes" rule.⁶² For the reasons set forth in the *Part 25 Review Second R&O*, we continue to believe that, on balance, retaining this milestone and the resulting operation of the "Three Strikes" rule best serves the public interest, and we see no compelling justification to counter-balance the public interest benefits in retaining the current requirements.⁶³ Accordingly, we will continue to presume that these licensees (*i.e.*, those covered under the "Three Strikes" rule) acquired licenses for speculative purposes, and we will restrict the number of additional satellite applications they may file to limit the potential for future speculation while the presumption is in effect.

4. Effects of Mergers on Application Limits

22. SIA asserts that it is unclear in the *First Space Station Licensing Reform Order* how the limit on pending and licensed but unlaunched satellites applies to satellite operators that would be formed by the merger of two companies.⁶⁴ We clarify that the limit on satellite applications does not prevent the filing of an application for transfer of control or assignment of licenses, even if the combined entities would not meet the limits on pending applications and unbuilt stations specified in the rule.⁶⁵ Of course, any such approval of the transfer of control will ultimately be conditioned on the entity coming into compliance with the limits within a reasonable amount of time.⁶⁶

5. Needs for Safeguards in Different Parts of the GSO Orbit

23. *Background.* In its Petition, Hughes asserts that the limit on pending applications and

⁵⁸ 47 CFR § 25.159(d); *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10836, para. 200.

⁵⁹ *Id.* at 10836-37, para. 201.

⁶⁰ SES Americom Petition at 17.

⁶¹ See *Part 25 Review Second R&O* at 14737-14740, paras. 57-64.

⁶² See 47 CFR § 25.159(d); *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10836, n.463 (stating the Commission will "presume that a licensee that creates a pattern of obtaining licenses and then surrendering them before a milestone deadline is also engaging in speculative activity"); *EchoStar Corporation, Application to Operate a C-Band Geostationary Satellite Orbit Satellite in the Fixed-Satellite Service at the 84.9° W.L. Orbital Location*, Memorandum Opinion and Order, 25 FCC Rcd 10193 (Int'l Bur. 2010).

⁶³ See *Part 25 Review Second R&O* at 14738-39, para. 61.

⁶⁴ SIA Petition at 2-3.

⁶⁵ In the *First Space Station Licensing Reform Order*, the Commission "emphasize[d] that a license purchaser will be required to comply with all the rules applicable to the original licensee, including ... the limits on pending applications and unbuilt satellites." *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10845, para. 222. See 47 CFR §§ 25.159(d) and 25.137(d)(5).

⁶⁶ In ruling on proposed mergers, the Commission routinely assesses "whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules." See *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40, para. 18 (2015).

licensed-but-unlaunched satellites is not necessary for those orbital locations not covering the United States.⁶⁷ Hughes also advocates eliminating the bond requirement for applicants for satellites that will operate at non-U.S. orbital locations.⁶⁸ Hughes proposes to define “U.S.” orbital locations as those within the orbital arc between 60° W.L. and 140° W.L., and to define “non-U.S.” locations as those outside that arc. Hughes argues that the limit should not apply to the “non-U.S.” orbital locations because other Administrations have international coordination priority at many of those locations and because many other Administrations have volatile economies.⁶⁹ Hughes argues that the demand for such locations has been “reasoned and measured,” so that the Commission can address them in an orderly fashion.⁷⁰

24. *Discussion.* The purpose of the safeguards in Section 25.159 of the Commission’s rules⁷¹ is not to reduce the number of satellite applications to a “reasoned and measured” level. Rather, the Commission intended the safeguards to discourage speculators from applying for satellite licenses, thereby precluding another applicant from obtaining a license, constructing a satellite, and providing service to the customers.⁷² Hughes assumes that, because fewer applications are filed outside of the arc from 60° W.L. to 140° W.L. than within that arc, speculation is not a concern. Although demand may not be as great for locations that cannot serve large portions of the United States, we have licensed many satellites at orbital locations in this portion of the arc that are subject to competition.⁷³ We have also granted U.S. market access to many non-U.S.-licensed satellites operating at those locations to provide services to U.S. customers.⁷⁴ Thus, allowing operators to hold these orbital locations while they decide whether to proceed with implementation could preclude other operators whose plans also involve providing international service from going forward. For these reasons, we will continue to apply the

⁶⁷ Hughes Petition at 7. As noted above, the *First Space Station Licensing Reform Order* established two limits on pending applications and/or unbuilt satellites, the stricter of the two limits is applicable to licensees that have established a pattern of missing milestones. See *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10835-36, paras. 198-200, 47 CFR § 25.159(d). Hughes maintains that the stricter limit should not apply to orbital locations not covering the United States. Hughes Petition at 7. We also observed above that the *Part 25 Review Second R&O* eliminated one of the two limits on pending applications and/or unbuilt satellites and the bond requirement. As a result, this issue is moot.

⁶⁸ Hughes Petition at 9. In the *Part 25 Review Second R&O*, the Commission adopted significant revisions to the bond requirement adopted in the *First Space Station Licensing Reform Order*. *Part 25 Review Second R&O* at paras. 70-85. However, the Commission continues to require a bond for all satellite licenses regardless of the orbit location.

⁶⁹ *Id.* at 7-8. Hughes Reply at 2.

⁷⁰ Hughes Petition at 8.

⁷¹ 47 CFR § 25.159.

⁷² See, e.g., *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10836-37, para. 201.

⁷³ See, e.g., *Orion Satellite Corporation, Request for Final Authority to Construct, Launch, and Operate an International Communications Satellite System*, Order, 6 FCC Rcd 4201 (1991) (granting a license to operate a satellite at 47° W.L.). See also *Intelsat License LLC Application for Modification of the Intelsat 5 Authorization to Specify Operation at the 157° E.L. Orbital Location*, Order and Authorization, 30 FCC Rcd 2703 (Int’l Bur., Sat. Div. 2015); *Intelsat 8 Modification*, IBFS No. SAT-MOD-20120619-00100, as amended by IBFS File No. SAT-AMD-20120815-00131 (granted Aug. 3, 2013).

⁷⁴ *Mabuhay Philippines Satellite Corp., Petition for Declaratory Ruling*, Order and Authorization, 15 FCC Rcd 23671 (Int’l Bur., Sat. and Rad. Div. 2000) (placing a non-U.S.-licensed satellite located at 146° E.L. on the Commission’s Permitted Space Station List). See also *New Skies, B.V. Petition for Declaratory Ruling to Add the C-Band NSS-9 Space Station at the 177° W.L. Orbital Location to the Commission’s Space Station Permitted List*, IBFS No. SAT-PPL-20080811-00152, as amended by SAT-APL-20081212-00230 (granted February 10, 2009); *New Skies Satellites, B.V. Petition for Declaratory Ruling to Add the SES-4 Space Station at the 22° W.L. Orbital Location to the Commission’s Space Station Permitted List*, IBFS No. SAT-PPL-20110620-00112 (granted April 15, 2012).

safeguards against speculation, including the bond requirement, where appropriate, regardless of orbital location.

C. Other Issues

1. Satellite System Implementation Requirements

25. *Background.* In its petition for reconsideration, ICO asserts that the *First Space Station Licensing Reform Order* does not state clearly that NGSO-like licensees acquiring additional spectrum from other NGSO-like licensees are permitted to implement a single, integrated NGSO system under a single milestone schedule. ICO requests the Commission to clarify that such licensees will not be required to construct multiple separate satellite systems.⁷⁵

26. *Discussion.* The Commission eliminated the anti-trafficking rule to allow NGSO-like licensees in modified processing rounds to acquire rights to operate on additional spectrum from other licensees if they feel it is necessary to meet their business needs.⁷⁶ It would be inefficient to require these licensees to build two incompatible satellite networks, each operating in only part of the spectrum rights that the licensee is authorized to use. We therefore clarify that NGSO-like licensees acquiring spectrum rights from other NGSO-like licensees are permitted to build a single, integrated NGSO-like system operating on all authorized frequency bands, under a single milestone schedule. These cases are inherently fact-specific, and so we decline to adopt a blanket approach about the milestone schedule that would apply in these cases.⁷⁷ If the milestone schedules of each license differ, we will address, on a case-by-case basis, the particular milestone schedule that will be imposed on the integrated system.

2. Non-U.S.-Licensed Satellites

27. *Background.* Under the terms of the World Trade Organization (WTO) Agreement on Basic Telecommunication Services (WTO Telecom Agreement),⁷⁸ WTO signatories, including the United States, have made binding commitments to open their markets to foreign competition in satellite services.⁷⁹ Consistent with those commitments, the Commission adopted *DISCO II* in 1997 to establish procedures for non-U.S.-licensed satellite operators seeking access to the U.S. market.⁸⁰ In the *DISCO II*

⁷⁵ ICO Comments at 1-2.

⁷⁶ See *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10842, para. 217.

⁷⁷ For example, depending on the differences in the milestone schedules, permitting licensees to adopt a schedule with significantly more time might encourage licensees to acquire other licensees merely to gain more time to fulfill their milestone schedules. On the other hand, integrating additional spectrum into a single network may legitimately require more time in some cases.

⁷⁸ The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement). 33 I.L.M. 1125 (1994). The Marrakesh Agreement includes multilateral agreements on the trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Service (GATS) is Annex 1B of the Marrakesh Agreement. 33 I.L.M. 1167 (1994). The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (Fourth Protocol to the GATS).

⁷⁹ Fourth Protocol to the GATS, 36 I.L.M. at 363. See also *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24102, para. 19 (1997) (*DISCO II*). The United States made market access commitments for Direct-to-Home (DTH) Service, Direct Broadcast Satellite (DBS) Service, and Digital Audio Radio Service (SDARS), and took an exemption from most-favored nation (MFN) treatment for those services as well. See Fourth Protocol to the GATS, 36 I.L.M. at 359. Generally, GATS requires WTO member countries to afford MFN treatment to all other WTO member nations.

⁸⁰ *DISCO II*, 12 FCC Rcd at 24174, para. 186.

First Reconsideration Order, the Commission streamlined those procedures.⁸¹

28. In the *First Space Station Licensing Reform Order*, the Commission established a procedure for addressing changes in ownership of non-U.S.-licensed satellites.⁸² Specifically, when the operator of such a satellite undergoes a change in ownership, the Commission requires the satellite operator to notify the Commission of the change. The Commission then issues a public notice announcing that the transaction has taken place and inviting comment on whether the transaction affects any of the considerations made when the original satellite operator was allowed to enter the U.S. market.⁸³ In addition, if control of the satellite was transferred to an operator not based in a WTO member country, the Commission would invite comment on whether the purchaser has satisfied all applicable *DISCO II* requirements.⁸⁴ The Commission then determines whether any commenter raised any concern that would warrant precluding the new operator from entering the U.S. market, including concerns relating to national security, law enforcement, foreign policy, or trade issues.⁸⁵

29. *Discussion.* According to SIA, the rule revisions adopted in the *First Space Station Licensing Reform Order* to implement this satellite transfer procedure do not state clearly that satellite operators are allowed to notify the Commission of transfers of ownership of satellites *after* the transfer takes place.⁸⁶ SIA asks us to revise Section 25.137(g) of the Commission's rules to make clear that non-U.S.-satellite operators may notify the Commission of a change of ownership after the transfer takes place.⁸⁷ We will do so. The Commission did not intend to require foreign entities to notify the Commission of the transaction before it had been completed. Rather, the Commission adopted its proposal in the *Space Station Licensing Reform NPRM* to address such changes in ownership by "issuing a public notice announcing that the transaction has taken place."⁸⁸ Therefore, we revise Section 25.137(g) as SIA suggests, as set forth in Appendix B of this Order. We also clarify that parties must notify the Commission within 30 days after consummation of the transaction in order to enable the Commission to perform the review described in the *First Space Station Licensing Reform Order* in a meaningful and timely manner while the new foreign operator is permitted to access the U.S. market.

30. Further, in the *First Space Station Licensing Reform Order*, the Commission stated that operators requesting authority to provide service in the United States from a foreign-licensed satellite must file Form 312 (Application for Satellite Space and Earth Station Authorizations).⁸⁹ Hughes asserts that the electronic Form 312 does not allow a non-U.S.-licensed satellite operator to indicate that it is not seeking a Commission license, but is instead seeking U.S. market access. Hughes also questions whether parties seeking U.S. market access must file their requests electronically.⁹⁰ First, contrary to Hughes's assertion, the electronic version of Form 312 provides a place to indicate that the applicant is filing for a petition for declaratory ruling, which is the procedure for requesting U.S. market access. Second, the

⁸¹ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, 15 FCC Rcd 7202, 7214-16, para. 186 (1999) (*DISCO II First Reconsideration Order*).

⁸² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10880-81, paras. 326-29.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ SIA Petition at 5-8.

⁸⁷ SIA Petition at 8.

⁸⁸ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10880, para. 326-27. See also *Space Station Licensing Reform NPRM*, 17 FCC Rcd at 3894, para. 136.

⁸⁹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10872, para. 300.

⁹⁰ Hughes Petition at 6.

Commission stated explicitly in the *First Space Station Licensing Reform Order* that U.S. market access requests must be filed electronically,⁹¹ and we continue to believe that mandatory electronic filing serves the public interest by facilitating prompt receipt of petitions for declaratory ruling and accurate recording of the time of filing under the first-come, first-served processing procedure, and by providing other administrative efficiencies.

3. ITU Priority

31. *Background.* In the *First Space Station Licensing Reform Order*, the Commission discussed the interrelationship between its domestic licensing framework and the international coordination framework set forth in the Radio Regulations of the International Telecommunication Union (ITU).⁹² Hughes requests that we clarify how we will determine whether to grant or deny market access requests from non-U.S.-licensed satellite operators, particularly in cases where a non-U.S. operator has ITU coordination date-filing priority, *i.e.*, an earlier ITU protection date, but is behind a U.S. applicant in the U.S. space station queue.⁹³ In particular, Hughes argues that the first-come, first-served procedure should not “block” a non-U.S.-licensed satellite operator with ITU priority.⁹⁴

32. *Discussion.* The Commission discussed international coordination issues in the *First Space Station Licensing Reform Order*. Specifically, the Commission stated that it will license satellites at orbital locations at which another Administration has ITU priority. In fact, if a later-filed market access request – with or without ITU priority – is mutually exclusive with an earlier-filed, granted application, it may be dismissed absent a coordination agreement between the applicants. The Commission further stated, however, that it will issue the earlier-filed authorization subject to the outcome of the international coordination process, and emphasized that the Commission is not responsible for the success or failure of the required international coordination.⁹⁵ Absent such coordination, a U.S.-licensed satellite making use of an ITU filing with a later protection date would be required to cease service to the U.S. market immediately upon launch and operation of a non-U.S.-licensed satellite with an earlier protection date, or be subject to further conditions.⁹⁶ We continue to follow this general approach today.

4. Modifications

33. *Background.* Hughes notes that the rule revisions adopted in the *First Space Station Licensing Reform Order* require the Commission to treat modification requests involving new orbital locations or new frequency bands in the application processing queue, and other modification requests

⁹¹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10876, para. 314.

⁹² *Id.* at 10870, paras. 295-96.

⁹³ Hughes Petition at 3-6.

⁹⁴ Hughes Reply at 2.

⁹⁵ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10870, para. 295, citing *PanAmSat Corporation, Request for Special Temporary Authority to Operate a Space Station at 60° W.L.*, Order and Authorization, 15 FCC Rcd 21802, 21804-05, para. 11 (Int'l Bur., 1999); *Application of Columbia Communications Corporation for Modification of Authorization to Permit Operation of Ku-band Satellite Capacity on the Columbia 515 Satellite Located at 37.7° West Longitude*, Memorandum Opinion and Order, 16 FCC Rcd 12480, 12486, para. 16 (Int'l Bur. 2001). See also *The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3 - 17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Second Order on Reconsideration, 25 FCC Rcd 15718, 15722-25, paras. 7-13 (2010).

⁹⁶ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10870-71, para. 295, citing *KaStarCom World Satellite, LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 14322, 14330, para. 25 (Int'l Bur. 2001).

outside of the queue.⁹⁷ Hughes supports this approach, but asserts that the Commission stated elsewhere in the *First Space Station Licensing Reform Order* that, unless it could categorically classify certain modification requests involving new frequencies or orbital locations as “minor,” it would treat all such modification requests in the processing queue.⁹⁸ Hughes requests the Commission to reconcile these two statements.⁹⁹

34. *Discussion.* In the *First Space Station Licensing Reform Order*, the Commission revised its rules to adopt a clear, simple test for determining whether to process a modification request in the processing queue: modification requests involving new orbital locations or new frequency bands are considered in the queue, and other modifications are considered outside of the queue.¹⁰⁰ We clarify here that nothing in the text of the *First Space Station Licensing Reform Order* was intended to alter the Commission’s decision to consider modification requests in this fashion. The Commission also suggested, however, that it could, at a later date, adopt rules to define certain modification requests involving new orbital locations as minor, and to consider such modification requests outside the queue.¹⁰¹ In this regard, in the *Second Space Station Licensing Reform Order*, the Commission decided to treat certain fleet management modification requests involving orbital reassignment of specific satellites outside the queue.¹⁰² We affirm, however, that, absent a rulemaking finding public interest reasons to create additional exceptions, we will continue to process orbital reassignment and frequency modification requests as set forth in Section 25.117(d)(2)(iii).

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

35. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA),¹⁰³ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the initial *Notice* in this proceeding.¹⁰⁴ The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *Notice*, including comments on the IRFA. No one commented specifically on the IRFA. Pursuant to the RFA,¹⁰⁵ a Final Regulatory Flexibility Analysis was incorporated into the *First Space Station Licensing Reform Order*.¹⁰⁶ A Supplemental Final Regulatory Flexibility Analysis is contained in Appendix C.

⁹⁷ Hughes Petition at 2-3.

⁹⁸ *Id.* at 3, citing *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10815-16, para. 144; Hughes Reply at 2.

⁹⁹ Hughes Petition at 3.

¹⁰⁰ See 47 CFR § 25.117(d)(2)(iii). The Commission adopted this test instead of a more complex proposal to place “major” modification requests in the queue, and to define “major” modification requests as those that would “degrade the interference environment.” *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10815-16, para. 144.

¹⁰¹ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10816, para. 144, and n.325.

¹⁰² *Amendment of the Commission’s Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission’s Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Second Report and Order, 18 FCC Rcd 12507 (2003) (*Second Space Station Licensing Reform Order*); 47 CFR § 25.118(e).

¹⁰³ See 5 U.S.C. § 603.

¹⁰⁴ *Space Station Licensing Reform NPRM*, 17 FCC Rcd at 3915-17 (App. D).

¹⁰⁵ See 5 U.S.C. § 604.

¹⁰⁶ *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10904-06 (App. D).

B. Paperwork Reduction Act

36. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

37. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We received no comments on this issue. We have assessed the effects of the revisions adopted that might impose information collection burdens on small business concerns, and find that the impact on businesses with fewer than 25 employees will be an overall reduction in burden. The amendments adopted in this Second Order on Reconsideration eliminate unnecessary information filing requirements for licensees and applicants; eliminate unnecessary technical restrictions and enable applicants and licensees to conserve time, effort, and expense in preparing applications and reports. Overall, these changes may have a greater positive impact on small business entities with more limited resources.

C. Congressional Review Act

38. The Commission will send copies of this Second Order on Reconsideration to Congress and the General Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), and will send a copy including the Final Regulatory Flexibility Act analysis to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq. (1981).

D. Effective Date

39. While not all the revisions to Part 25 adopted in this Second Order on Reconsideration require approval by OMB under the PRA, certain revisions do. These requirements cannot go into effect until OMB has approved the information collection requirements and the Commission has published a notice announcing the effective date of those requirements. To avoid confusion, all rule changes adopted in this Second Order on Reconsideration will become effective on the same date. The International Bureau will issue a Public Notice announcing the effective date for the rules adopted in this Second Order on Reconsideration.

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i), 301, 302, 303(r), 308, 309, and 310 of the Communications Act, 47 U.S.C. §§ 154(i), 301, 302, 303(r), 308, 309, and 310, and Section 1.429 of the Commission's rules, 47 CFR § 1.429, the petitions for reconsideration listed in Appendix A to this Order ARE GRANTED IN PART, DENIED IN PART, AND DISMISSED AS MOOT IN PART, to the extent indicated above.

41. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this *Second Order on Reconsideration* in IB Docket 02-34 is hereby ADOPTED.

42. IT IS FURTHER ORDERED, that Part 25 of the Commission's Rules IS AMENDED as set forth in Appendix B and Section 25.157 is revised to remove the "three-licensee presumption" as well as the requirement that the Commission withhold spectrum for use in a subsequent processing round if fewer than three qualified applicants are licensed in the initial processing round.

43. IT IS FURTHER ORDERED, that Section 25.137(g) is AMENDED to clarify that satellite operators are allowed to notify the Commission of transfers of ownership of Permitted List satellites after the transfer takes place.

44. IT IS FURTHER ORDERED that all rule revisions will be effective on the same date,

which will be announced in a Public Notice.

45. IT IS FURTHER ORDERED that the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

46. IT IS FURTHER ORDERED that the Chief, International Bureau is delegated authority to modify satellite licenses consistent with the provisions of this Order above.

47. IT IS FURTHER ORDERED that this proceeding IS TERMINATED pursuant to Section 4(i) and 4(j) of the Communications Act, 47 U.S.C. §§ 154(i) and (j), absent applications for review or further appeals of this *Second Order on Reconsideration*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX AParties Filing Pleadings

A. Petitions (Sept. 26, 2003)

1. Boeing Company, Hughes Network Systems, Inc., Iridium Satellite LLC, Lockheed Martin Corporation, Loral Space & Communications, Ltd., Mobile Satellite Ventures, LP, PanAmSat Corporation, and SES Americom, Inc. (together, “Joint Commenters”)
2. Hughes Network Systems, Inc. (Hughes)
3. ICO Global Communications (Holdings), Limited (ICO)
4. Northrop Grumman Space Technology and Mission Systems, Corporation (Northrop)
5. Satellite Industry Association (SIA)
6. SES Americom, Inc. (SES Americom)
7. Telesat Canada (Telesat)

B. Comments (Nov. 6, 2003)

1. @Contact, LLC (@Contact)
2. ICO
3. Intelsat LLC (Intelsat)
4. Space Imaging LLC (Space Imaging)

C. Replies (Nov. 19, 2003)

1. Hughes
2. Joint Commenters
3. SES Americom

D. Ex Parte

1. SIA (April 1, 2016)

APPENDIX B**Final Rules**

For the reasons discussed above, the Federal Communications Commission amends title 47 of the Code of Federal Regulations, Part 25, as follows:

PART 25 -- SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Interprets or applies 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

2. Amend § 25.137 by revising paragraph (g) to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations

* * * * *

(g) A non-U.S.-licensed satellite operator that acquires control of a non-U.S.-licensed space station that has been permitted to serve the United States must notify the Commission within 30 days after consummation of the transaction so that the Commission can afford interested parties an opportunity to comment on whether the transaction affected any of the considerations we made when we allowed the satellite operator to enter the U.S. market. A non-U.S.-licensed satellite that has been transferred to new owners may continue to provide service in the United States unless and until the Commission determines otherwise. If the transferee or assignee is not licensed by, or seeking a license from, a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement, the non-U.S.-licensed satellite operator will be required to make the showing described in paragraph (a) of this section.

3. Amend § 25.157 by removing paragraphs (e)(3) and (g)(3) and revising paragraphs (e)(1) and (e)(2); to read as follows:

* * * * *

(e)(1) In the event that there is insufficient spectrum in the frequency band available to accommodate all the qualified applicants in a processing round, the available spectrum will be divided equally among the licensees whose applications are granted pursuant to paragraph (d) of this section, except as set forth in paragraph (e)(2) of this section.

* * *

(2) In cases where one or more applicants apply for less spectrum than they would be warranted under paragraph (e)(1) of this section, those applicants will be assigned the bandwidth amount they requested in their applications. In those cases, the remaining qualified applicants will be assigned the lesser of the amount of spectrum they requested in their applications, or the amount of spectrum that they would be assigned if the available spectrum were divided equally among the remaining qualified applicants.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in the Matter of Comprehensive Review of Licensing and Operating Rules for Satellite Services.² The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Rules

This Order adopts minor changes to Part 25 of the Commission's rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services.⁴ We revise the rules to, among other things, further the goals of the *First Space Station Licensing Reform Order* to develop a faster satellite licensing procedure while safeguarding against speculative applications, thereby expediting service to the public.

This Order revises two sections of Part 25 of the rules. Specifically, it revises the rules to:

- 1) Eliminate the "three-licensee presumption" that applies to the NGSO-like processing round procedure, and also revise the procedures that we will apply when we redistribute spectrum among remaining NGSO-like licensees when a license is cancelled for any reason.
- 2) Clarify that non-U.S.-satellite operators may notify the Commission of a change of ownership after the transfer takes place.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities. The Commission has, nonetheless, considered any potential significant economic impact that the rule changes may have on the small entities which are impacted. On balance, the Commission believes that the economic impact on small entities will be positive rather than negative, and that the rule changes move to streamline the Part 25 requirements.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996) (CWAAA).

² *Further Notice*, 29 FCC Rcd at 12230-34, Appendix D.

³ See 5 U.S.C. § 604.

⁴ 47 CFR Part 25, Satellite Communications.

did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸ Below, we describe and estimate the number of small entity licensees that may be affected by the adopted rules.

Satellite Telecommunications and All Other Telecommunications

The rules adopted in this Order will affect some providers of satellite telecommunications services. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$32.5 million or less in annual receipts.⁹ Under the “Other Telecommunications” category, a business is considered small if it had \$32.5 million or less in annual receipts.¹⁰

The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹¹ For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year.¹² Of this total, 482 firms had annual receipts of under \$25 million.¹³

The second category of Other Telecommunications is comprised of entities “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.

⁵ 5 U.S.C. § 604(a)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁸ Small Business Act, 15 U.S.C. § 632 (1996).

⁹ See 13 CFR § 121.201, NAICS code 517410.

¹⁰ See 13 CFR § 121.201, NAICS code 517919.

¹¹ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications.”

¹² See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en.

¹³ *Id.*

Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”¹⁴ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.¹⁵ Of this total, 2,346 firms had annual receipts of under \$25 million.¹⁶ We anticipate that some of these “Other Telecommunications firms,” which are small entities, are earth station applicants/licensees that will be affected by our adopted rule changes.

We anticipate that our rule changes will have an impact on space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our actions.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The Order adopts a number of rule changes that will affect reporting, recordkeeping and other compliance requirements for space station operators. These changes, as described below, will decrease the burden for all businesses operators, especially firms that are applicants for licenses to operate NGSO-like space stations.

We simplify the rules to facilitate improved compliance. First, the Order simplifies information collections in applications for NGSO-like space station licenses. Specifically, the Order eliminates reporting requirements that are more burdensome than necessary. For example, the Order removes the “three-licensee presumption,” a rebuttable presumption that assumes, for purposes of the modified processing round procedure for NGSO-like space station applications, a sufficient number of licensees in the frequency band is three, and if the processing round results in less than three applicants, 1/3 of the spectrum in the allocated band will be reserved for an additional processing round. To rebut this presumption, a party must provide convincing evidence that allowing less than three licensees in the frequency band will result in extraordinarily large, cognizable, and non-speculative efficiencies. Thus, applicants for NGSO-like space stations will not need to expend resources, both technical and legal, to demonstrate that their NGSO-like systems are designed to provide such efficiencies in order to rebut the three-licensee presumption. Furthermore, in cases where spectrum was granted pursuant to a processing round, and one or more of those grants of spectrum is lost or surrendered for any reason, the rules now allow for the returned spectrum to be redistributed without automatically triggering a new processing round and the corresponding costs and paperwork involved, thus reducing the administrative burdens on those applicants.

Another example is that we see no reason to require non-U.S.-satellite operators with satellites on the Permitted List to notify the Commission of a change of ownership before the transfer takes place. Thus, we revise our rule to state clearly that non-U.S.-satellite operators are allowed to notify the Commission of transfers of ownership of Permitted List satellites *after* the transfer takes place. Thus, these satellite operators are relieved of any additional burden that could result from a delay in completing a transfer of Permitted List satellites pending Commission approval.

¹⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications,” <http://www.census.gov/naics/2007/def/ND517919.HTM>.

¹⁵ See 13 CFR § 121.201, NAICS code 517919.

¹⁶ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁷

The Commission is aware that some of the revisions may impact small entities. The *First Space Station Licensing Reform Order* sought comment from all interested parties, and small entities were encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the *First Space Station Licensing Reform Order*. No commenters raised any specific concerns about the impact of the revisions on small entities. This order adopts rule revisions to modernize the rules and advance the satellite industry. The revisions eliminate unnecessary requirements and expand routine processing to applications in additional frequency bands, among other changes. Together, the revisions in this Order lessen the burden of compliance on small entities with more limited resources than larger entities.

The adopted changes for NGSO-like space station licensing clarify requirements for NGSO-like modified processing rounds. Each of these changes will lessen the burden in the licensing process. Specifically, this Order adopts revisions to reduce filing requirements and clarify the procedures for redistribution of surrendered spectrum in such a way that applicant burden will be reduced. Thus, the revisions will ultimately lead to benefits for small NGSO-like space station operators in the long-term.

G. Report to Congress

The Commission will send a copy of this Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁸ In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁹

H. Legal Basis

The action is authorized under Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r).

¹⁷ 5 U.S.C. § 603(c)(1)-(c)(4).

¹⁸ See 5 U.S.C. § 801(a)(1)(A).

¹⁹ See 5 U.S.C. § 604(b).